

# **Mortgage Broker Practices Act Rulemaking Panel Meeting Minutes**

June 1, 2006

Panel members present: Chuck Cross, Catherine Mele-Hetter, Jeff Berglund, Jeffrey Lorsch, and Adam Stein

Absent: Laura Kiel, Rich Bennion and Deb Bortner

## **1. Welcome and Introductions:**

Chuck introduced the Panel and other DFI staff present.

## **2. Meeting Format and Protocols:**

Chuck briefly reminded the audience to sign-in.

## **3. Document Status Report**

Cindy Fazio, DFI, went over the highlights of the changes to the Mortgage Broker Practices Act Draft WACs that will be discussed today.

There are changes under each of the following headings:

- A. Purpose, Scope and Coverage
- B. Definitions
- Page 6 – (22) We have added applicable federal statutes and regulations.
- C. Exemptions From Licensing
- D. Mortgage Broker Main Office
- E. Designated Brokers
- F. Mortgage Broker Branch Offices
- G. Loan Originators
- H. Out-of-State Mortgage Brokers and Loan Originators
- I. Mortgage Broker Licensing
- K. Loan Originator Licensing
- N. Disclosure Requirements
- Q. Trust Accounting

About one third of the Licensing Sub-Panel material was ready for submission for today's meeting.

Chuck said not to be too concerned with grammar, etc. The Sub-Panels will address those issues.

#### **4. Reading and Assignment of Public Comments to Date**

Cindy Fazio read the comments received May 6-26, 2006. These all deal with education.

1. The first commenter has concerns with the professional organization concept for how continuing education will be provided. They are concerned that a monopoly might be created. The users of continuing education could have a disservice to them if there is a smaller pool of qualified education providers. They give some other methodologies for how education could be provided. They remind us that education approval standards already exist and pre-licensing testing options also exist. DFI doesn't need to recreate the wheel.

**Chuck – The commenter identified five other states that have a similar requirement of using professional organizations or associations.**

**Chuck – Misc. Sub-Panel. Chuck is interacting with individual course providers trying to iron out some of their concerns and issues.**

2. This commenter is concerned that the Department is showing favoritism to professional organizations by choosing this method of providing education.

**Chuck – This seems to be a comment only. The comment is noted. Nothing needs to be done.**

3. The commenter provides suggestions for the test. They state a concern with issuing interim licenses to someone who hasn't taken the test.

**Chuck – We already have these elements in the current test, and the future test should be even better. We will include all of these things in the test.**

**Jeffrey – He thinks the commenter is saying they want the test takers to actually fill out the GFE and TIL in the test.**

**Adam – We could have a certain frequency of important issues (i.e. Reg. Z and APR) show up in the bank of 1,000 questions.**

**Chuck – The Panel and the Department would like to have a test done ASAP, but we also want to have a good product.**

**Chuck – Not assigned to any Sub-Panel. DFI will work with the company who writes the test.**

4. The commenter wants to know what the current requirements are for continuing education.

**Chuck - The current requirements are in the current rules. We are not sure what the future education requirements will be.**

**Not assigned to any Sub-Panel.**

5. They have concerns about the whole scheme of the Department approving professional organizations and then those organizations approving the courses. They offer to write ethics standards for the mortgage industry, and they can also provide education.

**Chuck - There is no statutory requirement that ethics be developed for the industry. We all agree that it should be part of continuing education and testing.**

**Misc. Sub-Panel.**

## **5. Sub-Panel Reports**

**Licensing Sub-Panel** – Jeffrey Lorsch – They met on May 26 and reviewed two thirds of the draft. They were to address the issues if necessary. Comments were due to Cindy by May 30 for inclusion in today's draft of the WAC.

**Examination Sub-Panel** – Jeff Berglund – There is a draft examination manual now with excel forms embedded in it. Jeff is the guinea pig for the first exam.

Chuck – Do you think the draft exam manual can be published on the DFI website now?

Jeff – Yes.

**Enforcement Sub-Panel** – Chuck – This Sub-Panel has the least amount of work to do. They have produced good things so far.

Chuck – He has a list of what would be prohibitive practices. We will decide how much of that list to bring into the rules. HUD uses an appendix.

**Misc. Sub-Panel** – This group hasn't done a lot since the last Panel meeting.

The definition of "good standing" should be ready for the June 15 Panel meeting.

## **6. Work Session with Latest WAC Version**

### **a. Discussion About Rules Format**

Jeffrey said the mortgage broker and loan originator information in our draft seems to jump around a lot. There were two organizational suggestions:

1. Discuss subject matter with two columns.

Testing: (subject)

Mortgage Broker	Loan Originator

2. Put all mortgage broker information together and all loan originator information together with subjects under them.

Cindy said we are close enough to the end of the licensing section to make the format change now. We could add a cross reference appendix document as long as we work within the Code Reviser's Office guidelines. We'll make sure we say the appendix is not part of the law; it is to be used as an aid.

The Panel voted to organize the rules document by mortgage broker, loan originator, and designated broker. Cindy will redo the outline and send it around to the Panel members for approval.

Jeffrey – Organize the subjects in logical order of what the person needs to do first, second, and third.

Chuck – The problem is when you have a question like “Can a loan originator work from a fixed physical location?” What subject do you put it under? Both “loan originator” and “location.”

Catherine – We can put a note to say “also see WAC xxx for further information.”

### **6. b. Discussion of Mortgage Broker and Loan Originator Testing Frequency**

The question is how long you remain in “good standing” if you are out of the industry.

Adam - How often does the test change? The current test hasn't been updated in 10 years.

Adam - How current are we going to keep this industry?

Jeff - Is there going to be a provision for anyone to be inactive?

Chuck – Even an inactive licensee needs to keep up on their continuing education. Otherwise they become unlicensed.

Adam – For example, if someone is out of the industry for five years, do they need to retest?

Adam and Jeff – Take back to the Licensing Sub-Panel for recommendations.

### **6. c. Discussion of Good Standing Reviews**

The licensee shouldn't have to worry about "good standing" for address or name changes. Or if the licensee just adds a loan originator, they don't have to go through the "good standing" test.

Chuck – There are four areas where "good standing" applies:

1. Adding a branch location
2. Renewing a license for the company
3. Maintaining an exemption
4. Adding a designated broker

Adam – With the new database, it should be easier to freeze out someone who isn't in good standing.

Chuck – We will probably have the ability to flag someone.

Chuck to Cindy – Search through the rules where "good standing" appears to see if there are areas of overkill.

### **Review of draft WAC:**

Page 2 (4) – Where must residential real estate be located in a residential mortgage transaction governed by the Mortgage Broker Practices Act?

Chuck – Under the prohibitive practices section, we could revoke a license for violations committed in other jurisdictions. For example, if a Washington broker is doing a loan in Idaho on Idaho property, we don't have jurisdiction. If Idaho takes action, we can revoke their Washington license.

We could put this under "good standing" or "prohibitive practices."

Catherine – She wants the DFI enforcement attorneys to look at "residential real estate."

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Chuck already had Joe Vincent, Deb Bortner, Scott Jarvis, Dave Huey, and Susan Carlson review it.

Cindy will show it to James Brusselback, Enforcement Program Manager, for one last review.

Referred back to the Enforcement Sub-Panel.

Page 3 (7) – Bait and switch.

Adam – He likes that, but when does incompetence become a violation of the law?

Chuck – It comes down to case specific, but ignorance is not a defense.

Page 8 (28) – Loan originator definition.

Chuck – He isn't comfortable redefining it again in rules. This adds to the definition. He thought we were going to define "take" or "taking" and "offers and negotiates."

Catherine – This was an attempt to define "taking."

Chuck – Don't we either bring all statute definitions forward or none of them?

Catherine – Yes. It looks like we brought all definitions from the statute forward into the rules.

Cindy will bring the loan originator definition forward.

The Misc. Sub-Panel will further define "takes" and "offers and negotiates."

Catherine – Under this section, say "for the purposes of this definition, taking means . . ."

Page 9 (30) – Change "discussing" to "negotiating" in the fifth line down in that definition.

Page 9 (31) – Lock-in agreement.

Adam – Add "specific cost."

Chuck – That is already covered under the existing disclosures. We don't need it in the definition.

The definition is okay as written.

Page 11 (43) – Table funding.

Chuck - Why do we need the definition? Is it used someplace else?

Jeff – He asked for it. He wants to make sure people know what it means.

Examination Sub-Panel.

This definition will be moved to the exam manual if we don't end up with a question about table funding in the rules.

Chuck to Cindy – We need to add a question about “table funding” under the exemptions.

Page 19 – Both questions.

Adam – He has concerns about exemptions to becoming a designated broker. He thinks they are weak. Adam forwarded Department of Licensing's exemption statute to the Panel. It is much more stringent. He wants to tighten ours up.

Chuck – The first question is about education, and the second question is about experience.

Jeff – Agrees with Adam that the education and experience substitutions on page 19 do not prepare someone for the industry.

Chuck – Take back to the Licensing Sub-Panel.

Catherine to Cindy – Also check the statute on page 21, .210 (1) (e).

Jeffrey – If you have any ideas of other substitutions for industry experience, send your comments to Cindy.

Page 13 – middle of page - If I am making residential mortgage loans under the Consumer Loan Act, RCW 31.04, am I exempt from the Mortgage Broker Practices Act?

Chuck – This needs a little more clarification from DFI staff. See Chuck's comments.

Page 14 – As an attorney, do I need a mortgage broker or loan originator license to negotiate a residential mortgage loan in the course of my practice?

Adam – Has concerns about “incidental.”

Jeffrey – Wants a quantity test.

Catherine – We want to look at it on a case-by-case basis.

Chuck – In Washington, if you do one loan, you need a license.

That question is okay.

Page 16 – last question - If a licensed mortgage broker shares an office with a licensed real estate broker, what are the obligations to advertise the shared office to the public?

How? The Licensing Sub-Panel will clarify.

Page 20 – 2. Designated Broker Responsibilities.

Adam – Would like some information pulled from statute to see when the designated broker is liable.

Cindy – Cindy's comment is a placeholder for that.

Page 21-23 – Come up with a complete list of what will be included. Include "industry knowledge" per Susan Williams' comment.

Page 24 – bottom of page - If I take a continuing education course approved by another state, will the department accept it as my continuing education requirement?

Chuck - Every place you see testing and continuing education needs more work.

Licensing Sub-Panel.

Page 25 – middle of page - Do I have to disclose to the borrower the name and location of the mortgage broker I am originating a loan for?

Add "and the license number" on the second line of the answer, after "mortgage broker."

Page 25 – last question - If I am a loan originator associated with more than one mortgage broker, may I originate mortgage loans to borrowers for all mortgage brokers?

Define "associated." Something like – Associated means that connection between the mortgage broker and the loan originator.

Catherine – Don't define it, just clarify "associated."

Chuck – The DFI attorneys will clarify.

Page 26 – first question - What must I do if I begin a loan origination for one mortgage broker but then cannot complete the transaction with that mortgage broker?

Chuck – It gives too much control over the transaction to the loan originator.



Chuck – He has a concern about a loan originator quitting a company and taking loan files to a new company.

Catherine and Chuck will modify.

Page 26 – bottom of page - May I accept payment of my loan originator commissions in my business name instead of my personal name?

Delete that question and answer on page 27.

Page 30 – (9) – Chuck does not want sales related courses here. Make the sections consistent between designated brokers and loan originators.

Page 31 – top of page - If I have taken continuing education courses approved for designated brokers, will that satisfy my loan originator continuing education requirement?

Delete that question and answer.

Page 35 – middle of page – Can the director deny my company's license application?

Chuck – Clarify what DFI does with the excess application fee.

Page 37 – Q. Trust Accounting.

Chuck and Laura had a long discussion about using a trust account occasionally under certain circumstances.

Chuck – No, there are no exceptions.

Catherine – Can we do an interpretive letter?

Chuck – In trust accounting enforcement actions, the defense is always: “I didn’t know. It was a mistake,” “I tried,” “I couldn’t,” or “it’s not my fault.”

Chuck – Co-mingling is a felony violation.

Chuck – His fear is that this happens more often than we think, because we’re not examining mortgage brokers on a regular basis. We’re only finding it when we do investigations.

## **7. Public Comments**

### **Susan Williams -**

Susan had education comments. She would urge the people responsible for developing testing standards for continuing education to allow plenty of room for non-regulatory topics, such as proper documentation, pre-underwrite a loan, basic loan programs, and other basic industry professionalism topics.

Chuck – Do the tests normally include those kinds of things?

Susan – That is usually dictated by the state. All state's education requirements include:

- Federal regulations
- State laws
- Industry practices – some states
- Ethics

Adam – Suggested question – “Am I required to take any specific courses within the first year?”

Adam - Would like to see that loan originators are required to take an ethics course within the first year.

Chuck – Repeat that course every three years as a refresher.

### **Jillayne Schlicke -**

A group of independent course providers met recently. One item of concern is that the definition of professional organizations is a group of people who would oversee and approve course providers, course materials, and instructors. Those professional organizations would also offer courses. That creates an inherent conflict of interest. She recommends we define “professional organizations” as someone, whether it is a profit or non-profit company, who approves providers, courses, and instructors, but does not offer courses. Those two functions must be separate. DFI would only have to work with a few professional organizations that approve courses. These organizations could compete against each other. The organizations could report to the Commission or DFI every quarter.

Chuck – How would the overseeing organization make money?

Jillayne – The organization would charge course providers a fee to look at the way their school is structured, a fee to review a course, and a fee to review instructors.

Chuck – What if one company charges a lesser fee to have the school, course, and instructors approved?

Jillayne – The overseeing organizations would have to report to the Commission and/or DFI quarterly.

Chuck – That is a unique idea. He's still concerned about one organization doing a better job of overseeing the school, course, and instructors than another.

Adam – The definition of professional associations wasn't intended to exclude private education providers. He likes the idea of a group forming an education providers association. His only concern is that is not how they went to the legislature.

Jillayne – Wants it clearly written in definition in the rules that the professional organization, for profit or non-profit, that makes decisions on courses, providers, and instructors, does not also engage in providing the courses.

Jillayne – Separate the approval process from the delivery of courses.

**John Long -**

He is involved in an effort to bring forth an organization of educators that would be seeking approval, so they could approve courses. It is not based on a profit motivation. Chuck asked how they would make money. John doesn't see great profits to be made. The idea is to have an organization formed of education institutions for the purpose of qualifying for the state to be able to underwrite educational courses. The people examining the courses for approval would be educators.

Educators (professors and teachers) would examine the courses for approval. Any money paid would go to administer the programs. The educators would be paid \$100-200 from fees charged for the review. They would be employees of a non-profit organization.

About 20 educators have come together to figure out a solution. Nobody wants to give their course to a competitor to analyze it and to approve it.

Chuck – Currently course descriptions are a public document. If anyone asks DFI to see that information, we have to provide it.

Another concern is the perception there would be obstruction, delays, additional expenses, and frustration to get courses approved. Competitors' courses may be approved quickly.

There may be 16,000 – 20,000 people needing to take educational courses.

Chuck – Do you have an objection to WAMB or NAPMW approving the courses and also giving courses?

John – Let the free marketplace determine where the business goes. He has a problem with WAMB or NAPMW in direct competition of giving the courses and also approving the courses.

Catherine – Do you have access to other state's approval processes? Could we get that in writing?

John – Yes. He will ask people.

John had another question about active and inactive licenses. He has had an inactive license in California for 20 years. If he pays a fee, they will activate his license.

Jeff – Thinks it is important to address the issue raised about the Mortgage Broker Commission being heavily populated with WAMB members. It's because WAMB members tend to be heavily involved in the industry.

Chuck – Historically it has been WAMB members that have applied for the Commission vacancies.

Jeff - There is a question of integrity, and it may not be appropriate.

## **8. Meeting schedules**

Chuck asked if we should meet longer next time? From 1:00 – 4:30? Should we have a few meetings where we take only written comments?

Catherine – Use the clock and limit public comment time.

For the next couple of meetings, we will invite written comments and limit the time for oral comments.

Catherine – We don't need to do number 3, Document Status Report, on the agenda.

We will start promptly at 2:00 p.m.

Adam – Manage by exception. The Panel can just comment if they have issues with the language.

Meeting called to order: 2:12 p.m.

Adjourned: 5:07 p.m.